

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

United States Courts
Southern District of Texas
ENTERED

APR 06 2005

Michael N. Milby, Clerk of Court

FINANCIAL FEDERAL CREDIT INC.,

Plaintiff,

V.

J. BUTLER ENTERPRISE, INC., JAMES A. BUTLER, MICHAEL RUCKER, JACK BUTLER, and BUTLER COUNTY TOOL RENTAL, LLC,

Defendants.

Civil Action No. H – 04 – 4135

MEMORANDUM AND ORDER

Plaintiff filed this action to collect payment on a Promissory Note (“Note”) issued to it by Defendant J. Butler Enterprise, Inc. (“Enterprise”). As consideration for accepting and funding the Note, Defendants James A. Butler, Michael Rucker, and Butler County Tool Rental, LLC, each executed and delivered to Plaintiff a Guaranty of the obligations of Defendant Enterprise to Plaintiff. The Guaranty provides that each Guarantor agrees to be directly and unconditionally liable to Plaintiff for the due payment and performance of all obligations of Defendant Enterprise to Plaintiff. Plaintiff has moved for summary judgment. Defendants have not responded.

A motion for summary judgment under Federal Rule of Civil Procedure 56 requires the Court to determine whether the moving party is entitled to judgment as a matter of law, based on the evidence thus far presented. *See* Fed. R. Civ. P. 56(c). “Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Kee v. City of Rowlett*, 247 F.3d 206, 210 (5th

Cir. 2001) (citations omitted). Evidence is construed in the light most favorable to the non-moving party. *Id.*

Summary judgment for Plaintiff is appropriate here because there is no genuine issue of material fact. Defendants have not even attempted to rebut Plaintiff's argument for summary judgment.¹ The Court hereby **GRANTS** Plaintiff's Motion for Summary Judgment.

IT IS SO ORDERED.

SIGNED this 5th day of April, 2005.



KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT.

¹ According to Local Rule 7.4, the failure of a party to respond to a motion will be taken as a representation of no opposition.